IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 15711 of 2003

Between:

P. Bapu Reddy, S/o. Lingareddy,
R/o. Ramareddy Post, Sadasivanagar Mandal,
Nizamabad Dist.

..... PETITIONER

AND

1.The Chairman and Managing Director, A.P.N.P.D.C.L.,
Warangal.
2.The Divisional Engineer (Elec.) O & C Division,
Kama Reddy, Nizamabad District.
3.The Superintending Engineer,
(Operation), Nizamabad.

.....RESPONDENTS

The Court made the following:

ORDER:

Challenging the action of the second respondent in issuing the Memo No.DEE/O&C/KMR/ADM/E2/ D.No.1725/03, dated 19.07.2003 in taking steps to revert the petitioner as Line Man from the post of Line Inspector, the present writ petition has been filed.

2. The case of the petitioner, in brief, is that he is working as Line Man. As per the

regulations, if a person possess 9th class pass with 6 years of experience in O & M Cadre, he would be eligible for promotion to the post of Line Inspector. The petitioner had completed more than 6 years of service and he is eligible for promotion of Line Inspector. The second respondent, after conducting of D.P.C. on 12.03.2003, issued promotion orders to the petitioner on the same day. The posting orders were issued on 13.03.2003 and he took charge as Line Inspector and now he is working as such. Further, it is the case of the petitioner the Government had issued G.O.Ms.No.5, dated 14.02.2003 and G.O.Ms.No.21, dated 18.03.2003 laying guidelines for promotion of S.C. and S.T. candidates and the same have come into force with effect from 14.02.2003. In order to adopt the said guidelines of the both G.Os, the respondent Corporation has issued T.O.O.(GM(IR)-Per) Ms.No.320, dated 17.03.2003 as well as T.O.O. (GM (IR)-Per) Ms.No.324, dated 23.03.2003 respectively and the above said G.O.s were adopted with effect from 17.03.2003, but not as on the date of his promotion i.e. 12.03.2003. Both the orders i.e. T.O.O.Ms.No.324, and T.O.O.Ms.No.320 say that they have not any retrospective effect. Further, it is the case of the petitioner that the first respondent had issued orders directing the third respondent herein to take necessary steps following the guidelines issued in G.O.Ms.No.21, dated 18.03.2003 in the matter of giving promotions after the date of 14.02.2003 as regards the rule of reservation. The third respondent effected promotions on 28.02.2003 to several candidates from the post of Line Inspector to Senior Line Inspector without implementing the guidelines of G.O.Ms.No.5, dated 14.02.2003. The second respondent issued impugned proceedings dated 19.07.2003 calling for explanation from the petitioner as to why the petitioner should not be reverted to the post of Line Man from the Line Inspector. But, without waiting for petitioner's reply, the second respondent prepared a new panel in favour of the S.C. and S.T. candidates. Challenging the same, the present writ petition has been filed.

3. The respondents filed counter affidavit contending that the provisions of G.O.Ms.No.5, dated 14.02.2003 particularly Order 4 (f) specified that the reservation in promotions in favour of S.C. and S.T. candidates shall also apply to other institutions in which reservation in respect of SC and ST candidates is followed and that the TRANSCO/NPDCL has no discretion except to implement the orders under the said G.O. with immediate effect i.e. 14.02.2003. According to Order 4(i), if

promotions are effected, the panels already prepared shall continue without any changes or review and they shall not be reopened. According to order (5), the panel for 2002-2003, which were prepared and were not operated as on 14.02.2003, have to be reviewed to provide special representations in promotions for SC/ST employees. The respondents further contended in the counter that as on the date of 14.02.2003, the petitioner was Lineman and there was no DPC or promotion orders issued, in which case no review need to have done. The said DPC was held on 12.03.2003 and the petitioner took charge on 13.03.2003 and therefore, the promotions were reviewed and notices were issued accordingly.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondents.

The learned counsel for the petitioner contended that the G.O.Ms.No.5, dated 14.02.2003 was adopted by the respondents by issuing T.O.O. (GM (IR)-Per) Ms.No.320, dated 17.03.2003 with immediate effect and therefore, the contents of the said G.O. in respect of rule of reservation in promotions would apply only with effect from 17.03.2003, but not have any retrospective effect and the petitioner was given promotion on 12.03.2003, and therefore, since the promotions have been given prior to 17.03.2003, the impugned proceedings suffer from infirmities.

On the other hand, the learned standing counsel for the respondents contended that one of the guidelines issued in the G.O.Ms.No.5, dated 14.02.2003 is that filling up of the roster points will be given separately and accordingly, the G.O.Ms.No.21, dated 18.03.2003 clearly indicated that the panel for 2002-2003 which was prepared and was not operated as on 14.02.2003 have to be reviewed to provide special representation in promotion for Scheduled Caste and Scheduled Tribe employees, and therefore, there is no infirmity in issuing the show cause notice.

The Government issued G.O.Ms.No.5, dated 14.02.2003 providing rule of reservation to the Scheduled Castes and Scheduled Tribe persons at the time of giving promotions by implementing the clause in the said G.O. which reads that

detailed guidelines on filling up the roster points based on the rule of reservation in promotions will be issued separately. Thereupon, G.O.Ms.No.21, dated 18.03.2003 was issued giving certain guidelines to clause 4(g) of the G.O.Ms.No.5, reads as follows:

> ***"The panel for 2002-2003 which are prepared and are not operated as on 14.02.2003 have to be reviewed to provide special representation in promotion for Scheduled Caste and Scheduled Tribe employees."***

The G.O.Ms.No.5, dated 14.02.2003 has been adopted by the respondents vide proceedings No. TOO (GM (IR)-Per) Ms.No.320, dated 17.03.2003 with immediate effect. So, the contention of the learned counsel for the petitioner is that the G.O. Ms.No.5 has been adopted by the respondents would come into effect only with effect from 17.03.2003, but not retrospective. The learned counsel for the petitioner is right in saying that unless there is an indication to have retrospective effect, the order of presumption is only a prospective effect. But the guidelines sought to be implemented by the Board is not an amendment, and it is only an adoption of Government order wherein rule of reservation is provided in the matter of promotions to the certain categories. The respondent has been adopted the guidelines issued by the Government in G.O.Ms.No.5 as well as in G.O.Ms.No.21.

There cannot be any indication in the G.O. that whether the guidelines would follow as retrospective or prospective. When once the G.O. adopted by the respondents, it would effect only from the date of issuing the G.O., but not from the date the G.O. has been adopted. Since certain guidelines prescribed in the G.O.Ms.No.21, dated 18.03.2003, if any interpretation is made, the purpose and object of issuing the guidelines would be defeated. One of the guidelines is very clear that the panel for 2002-2003, which are prepared and are not operated as on 14.02.2003 have to be reviewed to provide special representations in promotions for SC and STs. The petitioner was promoted on 12.03.2003. But as on the date of 14.02.2003, the petitioner was not given any promotion. Since the G.O. is wholly adopted by the Corporation whatever the guidelines prescribed therein would automatically apply from the date of issuance of the G.O. Therefore, in any view of the matter, this aspect is also left open in view of the fact that the proceedings dated 19.07.2003 is a show cause notice calling for the explanation.

However, the learned counsel for the petitioner contended that the Divisional Engineer has also came to a pre-conclusion so as to revert the petitioner to original post. On perusal of the impugned notice, it cannot be said that the authority came to a pre-conclusion to revert the petitioner and it is only a show cause notice. Therefore, the writ petition is devoid of merits since the time for giving explanation is over.

In view of the fact that the petitioner prosecuted this writ petition challenging the show cause notice, it is desirable and appropriate to give a reasonable opportunity to the petitioner to give explanation to the show cause notice dated 19.07.2003, within a period of two weeks from the date of receipt of a copy of this order. After receipt of the explanation submitted by the petitioner, the respondents shall pass necessary orders in accordance with law. Till the respondents take appropriate decision, the petitioner shall not be reverted.

With the above observation, the writ petition is disposed of. No order as to costs.

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(K.C. BHANU, J)

Date: 18.08.2005

Note: Issue C.C. in three days

B.O.

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